

## REMARKS/ARGUMENTS

### Claims Rejection – 35 U.S.C. § 102(b): Claims 32, 34, 35, 42-44, 46 and 48-51

Examiner rejected Claims 32, 34, 35, 42-44, 46 and 48-51 under 35 U.S.C. § 102(b) as being anticipated by Brown (USPN 5,409,144). Applicant respectfully traverses this rejection and seeks reconsideration on the grounds set out below.

Examiner stated that Brown discloses a flexible container for liquid cleanser having two flexible members having a modulus of elasticity conducive to liquid containment and gaseous inflation.

However, Brown does not disclose a container composed of two flexible members. In fact, Brown teaches a “[c]ontainer body [that] is preferably integrally molded...so as to create a one-piece construction” (Col. 8, Lines 42-45). Moreover, while Brown does disclose the use of a “collapsible bag” (Col. 18, Line 36), Brown actually teaches away from such embodiments, teaching “container sidewalls...[that] preferably have sufficient resilience or stiffness that they automatically return to their original shape upon release of any external forces which are applied” (Col. 8, lines 46-51).

Furthermore, the “collapsible bag” embodiment that Examiner has cited teaches a “rigid base in which [the] valve is mounted” (Col. 18, Lines 44-45). This is not surprising, given that Brown’s valve mechanism includes a marginal valve flange of “substantial thickness” (Col. 9, Line 20). The area surrounding Brown’s dispensing valve is thus imbued with substantial rigidity that helps prevent deformation of the valve, a problem that Brown notes in other valve designs (Col. 1, Line 67 – Col. 2 Line 2). In contrast to Brown, the closure mechanism of the present invention is decidedly “flexible” and does not require a rigid base for mounting. It is designed to be capable of attachment at any position on the container, including along contoured areas.

Additionally, Brown does not disclose the use of its container for gaseous inflation. In fact, the dispensing valve disclosed is “self-sealing” (Col. 1, Line 19), and therefore resistant to inflation. By contrast, the present invention specifically teaches gaseous inflation, thereby expanding the enjoyment possibilities of the product beyond merely dispensing fluids.

Examiner further stated that Brown discloses a flexible closure having a hollow cylinder, having an open first end and an open second end coupled to the flexible members for repetitive filling and expelling of liquid cleanser.

However, applicant submits that Brown does not disclose an open first end, but rather a closed valve that only opens when sufficient pressure is applied. In fact, the overall disclosure of Brown is drawn to the operation of the valve and its self-sealing mechanism. This distinction is highlighted when one considers that Brown does not teach the use of the valve for repetitive filling. This is expected because Brown's valve is self-sealing, and therefore actually inhibits one from repetitively filling the container. In contrast, the closure mechanism of the present invention is a true open-ended design that enables a user to both fill and dispense fluid.

Examiner further stated that Brown discloses a stopper to seal the hollow cylinder.

However, the "removable cap" (Col. 16, Line 13) that Examiner cites does not function as a stopper and is not necessary to seal the dispensing valve. As stated, the main thrust of Brown's disclosure is directed to the self-sealing nature of the dispensing valve. The removable cap thus does not seal the valve because it is already self-sealed via a system of flaps (Fig. 4, 57). By way of analogy, the Brown invention is not unlike a tire valve stem and its corresponding stem cap. In the case of the tire, it is not the stem cap that seals the tire valve, but the tire valve mechanism itself. The stem cap provides additional protection to the valve components, but does not seal the valve in the same way that a stopper would seal an open cylinder. Likewise, the removable cap of Brown does not seal its dispensing valve any more than a tire stem cap seals a tire valve. In contrast, the present invention claims a stopper mechanism that functions to seal the closure mechanism.

For the reasons stated above, it is respectfully submitted that all the elements in the claimed invention are not found in Brown, and as such are not anticipated by this reference. Reconsideration of the rejections related thereto is respectfully requested.

**Claims Rejection – 35 U.S.C. § 103(a): Claims 33, 36, 37, 40, 41, 45 and 47**

Examiner rejected Claim 33 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,14) in view of Besse et al. (USPN 5,810,201). As set out above, Brown does not teach all the elements of Claim 32, from which Claim 33 depends. Besse et al. merely teaches a container for liquid soap created from polyvinyl chloride. Accordingly, the combination of Brown and Besse et al. does not disclose, teach or suggest all the elements of Claim 33, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

Examiner rejected Claims 36, 37, 40 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,14) in view of Haugk et al. (USPN 5,937,554). As set out above, Brown does not teach all the elements of Claims 32 and 34, from which Claims 36, 37, 40 and 41 depend. Haugk et al. merely teaches a container with a film insert in the container. Accordingly, the combination of Brown and Haugk et al. does not disclose, teach or suggest all the elements of Claims 32 and 34, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

Examiner rejected Claim 45 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,14) in view of Flackett et al. (USPN 6,343,712). As set out above, Brown does not teach all the elements of Claim 32, from which Claim 45 depends. Flackett et al. merely teaches a liquid soap dispenser formed in the shape of an animal. Accordingly, the combination of Brown and Flackett et al. does not disclose, teach or suggest all the elements of Claim 33, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

Examiner rejected Claim 47 under 35 U.S.C. § 103(a) as being unpatentable over Brown (USPN 5,409,14) in view of Henning et al. (USPN 3,623,638). As set out above, Brown does not teach all the elements of Claim 32, from which Claim 47 depends. Henning et al. merely teaches a liquid soap dispenser formed in the shape of a flower. Accordingly, the combination of Brown and Henning et al. does not disclose, teach or suggest all the elements of Claim 33, and thus the

combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

### **Secondary Considerations in Light of the KSR Decision**

In the recent U.S. Supreme Court decision *KSR International Co. v. Teleflex Inc.*, the court reaffirmed the probative value of commercial success when considering the issue of obviousness. See *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_\_ (2007). In light of this decision, applicant respectfully calls attention to its previously submitted evidence of commercial success in its Supplemental Response filed March 2, 2007. Applicant believes it has submitted conclusive evidence establishing a nexus between the claimed invention and its commercial success. Therefore, this factor weighs in favor of the non-obviousness of the present invention.

The court in *KSR* also reaffirmed the relevance of design need and market pressure as factors in the obviousness inquiry. In particular, the court noted that a design need or market pressure coupled with a finite number of predictable solutions can render combinations incorporating such solutions obvious under 35 U.S.C. § 103(a). See *Id.*

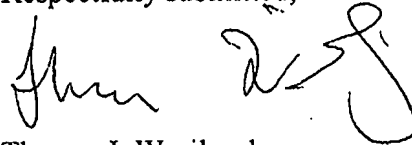
However, in the present instance, the soap, bath and shower industry is a highly developed and competitive industry, replete with numerous packaging designs ranging from simple jars to sophisticated pumps. Thus, there is little, if any, design need or market pressure for devices that dispense liquid cleanser; numerous solutions already abound. Nonetheless, amidst this dense commercial landscape, the claimed invention was introduced, where it enjoyed great commercial success that only diminished when competitors began copying applicant's designs. This success can be attributed to the non-obvious aspects of the invention, including its flexibility, reusability, adaptability to different designs, and ability to serve alternative purposes such as inflation for aesthetic enjoyment or compression for storage.

### **Conclusion**

In conclusion, based on the above, and the remarks submitted previously, it is submitted that the claimed invention is not anticipated or obvious in light of the cited prior art. It is

respectfully submitted that the claims are not rendered unpatentable and are in a condition for allowance. Reconsideration of the rejections is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theresa J. Wasilausky', written in a cursive style.

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